LEE, TAYLOR & SNEAD v. WILLIS.*

Supreme Court of Appeals: At Richmond.

December 13, 1900.

1. CHANCERY PRACTICE—*Vacation decrees—Entries on Sunday.* A vacation decree only becomes effective from the time it is entered in the chancery order-book of the clerk of the court in which the case is pending. Such entry made on Sunday is a void entry, and the decree, signed by the judge, remains as if it had not been copied into the order-book.

Appeal from a decree of the Circuit Court of Franklin county.

Dismissed.

E. W. Saunders, for the appellants.

Dillard & Lee, for the appellee.

No opinion was delivered, but the following order was entered by the court:

Upon an appeal from a decree pronounced by the Circuit Court of the county of Franklin on the 5th day of February, 1899, and upon a motion of the appellees to dismiss this appeal.

This day came again the parties by counsel, and it appearing to the court that the vacation decree appealed from was entered by the clerk in his chancery order-book on Sunday, the court is of opinion that the entry is void (see Broom's Legal Maxims, 21–22; *Swain* v. *Browne,* 3 Burruss, 1596; *Michie* v. *Michie,* 17 Gratt. 109; and *Read's case,* 22 Gratt. 924, 934), and that the decree signed by the judge is in the same condition as if it had not been copied into the order-book; and the court is further of opinion that a vacation decree only becomes effective from the time it is entered in the chancery order-book of the clerk's office of the court in which the case is pending (Code, sec. 3427 and amendments thereto), it is ordered that the appeal be dismissed as improvidently awarded, but without prejudice; and that the appellants pay to the appellees their costs by them about their defence herein expended.

Which is ordered to be certified to the said Circuit Court.

Dismissed.

NOTE.—It is well settled that under the common law, Sunday is *dies non juridicus.* A well established exception to this, is in receiving the verdict of a jury. The exception is based on the theory that this is a work of necessity. As said

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by the court in *Henderson* v. *Reynolds*, 84 Ga. 159, 7 L. R. A. 327, "It was much better to receive this verdict upon Sunday morning than to keep twelve jurors, and the officers attending them, confined in a room throughout the Sabbath, and for nearly thirty-six hours. It was an act of charity and of necessity to receive this verdict, so that the jurors could return to their homes for rest and refreshment during the night, and, if they so desired, could attend public worship during that day." See to the same effect: *Hiller* v. *English*, 4 Strob. L. 486; *Cory* v. *Silcox*, 5 Ind. 373; *Huidekoper* v. *Cotton*, 3 Watts, 59; *Hauswirth* v. *Sullivan*, 9 Pac. 808; *Wright* v. *Dressel*, 140 Mass. 147, 3 N. E. 12; *Van Riper* v. *Van Riper*, 1 South. (4 N. J. Law) 156, 7 Am. Dec. 576; *Reid* v. *State*, 53 Ala. 402; note 12 Am. Dec. 290; *Taylor* v. *Ervin*, 119 N. C. 274, 25 S. E. 875; *Stone* v. *U. S.*, 64 Fed. 667, 12 C. C. A. 451, and note; *Brown* v. *State* (Tex.) 22 S. W. 596. See *Ball* v. *U. S.*, 140 U. S. 118. See also Proffatt on Jury Trial, 455; 2 Thompson. Trials, 199; Abbott's Trial Brief, 531–532.

But no judgment can be validly entered on such verdict until a secular day. *Ball* v. *U. S.* (*supra*); *Blood* v. *Bates*, 11 Vt. 147; *Allen* v. *Godfrey*, 44 N. Y. 433; 1 Black on Judgments, 182. The note appended to *Stone* v. *U. S.*, 12 C. C. A. 462, contains a full discussion of Sunday as *dies non juridicus*, in all of its bearings.

In many of the States, contracts made on Sunday are held to be void, by reason of the statutory prohibition of all secular business on that day. Such contracts were not invalid at common law. Chitty on Contracts, 374; Clark on Contracts, 393; *Mackalley's Case*, 9 Co. 66b; *Swann* v. *Broome*, 3 Burr, 1595, 1597.

Sunday contracts, under the peculiar language of the Virginia statute, are probably not void generally. Section 3799 of the Virginia Code provides that "If any person, on a Sabbath day, *be found laboring* at any *trade* or *calling*, or employ his apprentices or servants in labor at other business, except in household or other work of necessity or charity, he shall forfeit two dollars for each offense."

In view of this peculiar language, and of the construction put upon the English statute (29 Charles II, C. 7) and those American statutes which, like the Virginia statute, are similar to, though not identical with, the English prototype, it would seem that the Virginia statute is far from prohibiting all secular business on the Lord's day. See *Peate* v. *Dicken*, 1 Cr. M. & R. (1 Exch.) 421, 427; *Sandiman* v. *Beach*, 7 B. & Cr. 96; *Drury* v. *Defontaine*, 1 Taunt. 131; *Scarfe* v. *Morgan*, 4 M. & W. 270. The Missouri statute closely resembles that of Virginia. It provides that "Every person who shall either labor himself, or compel or permit his apprentice or servant, or any person under his charge or control, to labor or perform any work, other than household offices, etc., on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor." Mo. Rev. Stats. 1889, sec. 3852. In *Roberts* v. *Barnes*, 127 Mo. 405, 48 Am. St. Rep 640, this statute was held not to prohibit the execution of a mortgage on Sunday.

The language of the Virginia statute seems directed toward the prevention of manual labor, or the conduct of business of such a nature, and in such open and notorious manner, as to disturb the tranquility of the Sabbath, or offend the religious sensibilities of the community, and bring the Sabbath day into contempt. The language is, if any person "*be found*"—indicating a public display of his contempt for the sanctity of the day; and, further, be found "*laboring*"—suggesting manual labor, rather than intellectual or other employment; again, laboring at

any "*trade or calling*"—the latter seeming to exclude isolated transactions, and scarcely suggesting pursuits higher than manual occupations, or at least those which can only be conducted in a public manner. True, servants and apprentices are by this statute forbidden to engage "*in any business*," but under the rule of *ejusdem generis*, this may fairly be confined to things of the same kind with those prohibited to the master. See *Peate* v. *Dicken* (*supra*), where Baron Parke expressed the conviction that the English statute prohibiting any "tradesman, artificer, workman, *or any person whatsoever*," from laboring on Sunday, did not apply to attorneys, but that the clause "any person whatsoever" should be confined, under the rule of *ejusdem generis*, to persons of a like kind with those expressly named.

Sec. 3800 of the Virginia Code excepts any person who conscientiously believes that Saturday should be observed as a Sabbath, and who "actually refrains from *all secular business* and labor on that day . . . and does not on that day disturb any other person." This may seem to indicate that all secular business is within the purview of the previous section above quoted. But the inference is not a necessary one. The purpose of sec. 3800 seems to have been, in order to prevent evasion of the Sunday law, to lay greater restrictions on one who prefers to observe Saturday.

It is a noteworthy tribute to the people of this State, as observers of the Sabbath, that our Supreme Court of Appeals has never been called upon to declare the effect of this statute upon contracts; and that but one criminal case thereunder is reported—the case of a Jew convicted of laboring on Sunday. *Ex parte Marx*, 86 Va. 40.

NORFOLK & WESTERN RY. CO. v. OLD DOMINION BAGGAGE CO.*

Supreme Court of Appeals: At Richmond.

January 17, 1901.

1. CONSTRUCTION OF STATUTES—*Foreign statutes—Construction—Subsequent enactment.* When the construction of a foreign statute has been settled by a number of decisions, and the legislature enacts that statute in the same words, it must be presumed that the construction placed upon the statute was adopted along with the statute.
2. RAILROADS—*Special privileges at stations—Acts 1891-2, p. 695.* Adopting the construction placed by the English courts on the English Railway and Canal Traffic Act of 1854, which must control in the interpretation of the Act of Assembly approved March 3, 1892 (Acts 1891-2, p. 695), railroad companies have the right to exclude from their stations and grounds persons who resort thereto, not for the purpose of using the railroad, nor for the public convenience, but solely for their private gain.

Appeal from a decree of the Circuit Court of the city of Lynchburg, pronounced June 17, 1899, in a suit in chancery, wherein the appellee

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